

ESTTA Tracking number: **ESTTA661173**Filing date: **03/16/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|---|
| Name | General Nutrition Investment Company |
| Granted to Date of previous extension | 03/15/2015 |
| Address | 1011 Centre Road, Suite 322 Wilmington, DE 19805 UNITED STATES |
| Attorney information | John W. McIlvaine The Webb Law Firm 420 Ft. Duquesne Blvd., Suite 1200 One Gateway Center PITTSBURGH, PA 15222 UNITED STATES JMcIlvaine@webblaw.com, abrooks@webblaw.com, cdickson@webblaw.com, npassaretti@webblaw.com, trademarks@webblaw.com Phone:(412) 471-8815 |

Applicant Information

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|--------------------------------|---|---------------------------------|------------|
| Application No | 86151084 | Publication date | 09/16/2014 |
| Opposition Filing Date | 03/16/2015 | Opposition Period Ends | 03/15/2015 |
| International Registration No. | NONE | International Registration Date | NONE |
| Applicant | 8724709 CANADA INC. 68, STINSON STREET MONTREAL, QUEBEC, PQ H4N 2E7 CANADA | | |

Goods/Services Affected by Opposition


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| Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Sun screen preparations |
| Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Medicated skin care preparations; acne treatment preparations; pharmaceutical preparations for skin care, skin treatment, skin protection and skin health restoration; medicated skin preparations |


Grounds for Opposition

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| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Marks Cited by Opposer as Basis for Opposition

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|-------------------|---------|------------------|------------|
| U.S. Registration | 4042407 | Application Date | 06/25/2008 |
|-------------------|---------|------------------|------------|

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|---------------------|--|-----------------------|------|
| No. | | | |
| Registration Date | 10/18/2011 | Foreign Priority Date | NONE |
| Word Mark | GNC WELLBEING | | |
| Design Mark |  | | |
| Description of Mark | The mark consists of the word "GNC" encircled with the word "wellbeing" to the right of the circle. The letters "be" in the word "wellbeing" appear in bold. | | |
| Goods/Services | Class 003. First use: First Use: 2008/11/14 First Use In Commerce: 2008/11/14 Bath salts | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 4211288 | Application Date | 07/07/2011 |
| Registration Date | 09/18/2012 | Foreign Priority Date | NONE |
| Word Mark | GNC PETS | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 003. First use: First Use: 2012/03/01 First Use In Commerce: 2012/03/01 Pet shampoo and conditioner | | |


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|-----------------------|---------------|-----------------------|------------|
| U.S. Registration No. | 4203689 | Application Date | 10/19/2011 |
| Registration Date | 09/04/2012 | Foreign Priority Date | NONE |
| Word Mark | GNC GENETIXHD | | |

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| Design Mark | GNC GENETIXHD |
| Description of Mark | NONE |
| Goods/Services | Class 005. First use: First Use: 2011/11/29 First Use In Commerce: 2011/11/29 Dietary supplements; Meal replacement and dietary supplement drink mixes; Meal replacement bars; Meal replacement drinks; Meal replacement powders; Nutritionaldrink mix for use as a meal replacement |


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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 4561343 | Application Date | 06/18/2013 |
| Registration Date | 07/01/2014 | Foreign Priority Date | NONE |
| Word Mark | GNC ACCELERATOR | | |
| Design Mark | GNC ACCELERATOR | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 2014/02/01 First Use In Commerce: 2014/02/01 Dietary supplements; nutritional supplements | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2180647 | Application Date | 07/28/1997 |
| Registration Date | 08/11/1998 | Foreign Priority Date | NONE |
| Word Mark | GNC | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 1964/01/01 First Use In Commerce: 1964/01/01 dietary supplements | | |


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|-----------------------|---------|------------------|------------|
| U.S. Registration No. | 4633940 | Application Date | 10/14/2013 |
|-----------------------|---------|------------------|------------|

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|---------------------|---|-----------------------|------|
| Registration Date | 11/04/2014 | Foreign Priority Date | NONE |
| Word Mark | GNC PUREEDGE | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 2014/02/12 First Use In Commerce: 2014/02/12 Dietary supplements; Nutritional supplements | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2187956 | Application Date | 12/10/1997 |
| Registration Date | 09/08/1998 | Foreign Priority Date | NONE |
| Word Mark | GNC LIVE WELL | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 1997/10/07 First Use In Commerce: 1997/10/07 DIETARY SUPPLEMENTS IN TABLET, CAPSULE, AND LIQUID FORM | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3994702 | Application Date | 02/22/2010 |
| Registration Date | 07/12/2011 | Foreign Priority Date | NONE |
| Word Mark | GNC MEGA | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 2010/09/20 First Use In Commerce: 2010/09/20 Dietary supplements for pets | | |

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|-------------------|---------|------------------|------------|
| U.S. Registration | 4381128 | Application Date | 07/03/2012 |
|-------------------|---------|------------------|------------|

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|---------------------|--|-----------------------|------|
| No. | | | |
| Registration Date | 08/06/2013 | Foreign Priority Date | NONE |
| Word Mark | GNC MILESTONES | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 2012/12/01 First Use In Commerce: 2012/12/01 Vitamins and mineral supplements for children, namely, gummy vitamins and mineral supplements, solid dose vitamins and mineral supplements, liquid vitamins and mineral supplements, ready to drink protein supplement shakes, nutritional supplement protein bars | | |

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| Related Proceedings | Opposer filed a First 90 Day Request for Extension of Time to Oppose for Good Cause on March 9, 2015 against Applicant's GMC MEDICAL word mark International Class 5 as shown in Application Serial No. 85973338. |
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| Attachments | 77507694#TMSN.png(bytes) 85366074#TMSN.png(bytes) 85451264#TMSN.png(bytes) 85963370#TMSN.png(bytes) 86090653#TMSN.png(bytes) 77941102#TMSN.png(bytes) 85667845#TMSN.png(bytes) Notice of Opposition.pdf(28945 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|---------------------|
| Signature | /John W. McIlvaine/ |
| Name | John W. McIlvaine |
| Date | 03/16/2015 |

**N UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GENERAL NUTRITION INVESTMENT
COMPANY,

v.

8724709 CANADA INC.,

Applicant.

Opposition No. _____

Application Serial No. 86/151,084

Trademark: GMC MEDICAL and Design

Published: September 16, 2014

NOTICE OF OPPOSITION

General Nutrition Investment Company (“Opposer”), by and through its undersigned counsel, hereby alleges that it will be damaged by registration of GMC MEDICAL and Design in International Classes 3 and 5 shown in Application Serial No. 86/151,084 (“the Application”), and hereby opposes the Application under the provisions of 15 U.S.C. § 1063.

As grounds for opposing the Application, Opposer avers as follows:

1. Opposer, General Nutrition Investment Company, is a corporation legally organized under the laws of the State of Arizona, and having a principal place of business at 1011 Centre Road, Suite 322, Wilmington, Delaware 19805.

2. Opposer's corporate parent, General Nutrition Centers, Inc. (“GNC”) is the largest global specialty retailer of nutritional products, including vitamin, mineral, herbal, and other specialty supplements and sports nutrition, diet, and energy products.

3. Either directly or through affiliates, franchisees, or licensees, GNC opens, owns, and/or operates retail nutrition, health, and/or fitness stores. Through these retail stores, store-in-store locations in pharmacies and its website at www.gnc.com, GNC sells, among other things,

vitamin and mineral supplements, sports nutrition products including sports nutrition drinks, herbs, health foods, cosmetics, and miscellaneous health care products, diet products, sports accessories, fitness products, and specialty workout apparel.

4. GNC's retail stores are staffed by employees dedicated exclusively to serving customers for these products and services. GNC currently has more than 8,100 retail locations worldwide, including more than 6,100 in the United States alone.

5. Over the past forty years, Opposer has established a portfolio of famous marks that are used by Opposer's affiliates, franchisees, and licensees in the conduct of the GNC business. These marks are part of a house brand for GNC which are protected under common law rights and extend to numerous International Classes encompassing the GNC house brand of goods and services.

6. Some of the relevant marks in this portfolio in International Classes 3 and 5 are GNC WELLBEING (design), GNC PETS, GNC GENETIXHD, GNC ACCELERATOR, GNC, GNC PUREEDGE, GNC LIVE WELL, GNC MEGA and GNC MILESTONES (jointly, the "GNC Marks").

7. GNC has expended considerable time, money and effort in the development, preparation, advertisement, promotion, and sale of goods and services under the GNC Marks throughout the United States and abroad.

8. To protect the use made of the portfolio of marks in the GNC business and the GNC house brand, Opposer has successfully registered its marks in countries around the world, including the United States.

9. Opposer is the owner of U.S. Trademark Registrations No. 4,042,407, 4,211,288, 4,203,689, 4,561,343, 2,180,647, 4,633,940, 2,187,956, 3,994,702, 4,381,128 for the marks GNC

WELLBEING (design), GNC PETS, GNC GENETIXHD, GNC ACCELERATOR, GNC, GNC PUREEDGE, GNC LIVE WELL, GNC WELLBEING (design), GNC PETS, GNC MEGA and GNC MILESTONES, respectively.

10. By virtue of the long, exclusive and continuous use of the distinctive GNC Marks for nutritional products, including vitamin, mineral, herbal and other specialty supplements and sports nutrition, diet and energy products including sports nutrition drinks, retail store services specializing in such goods, and health, nutrition and fitness training information, such goods and services have become well and favorably known to the general consuming public and the trade under such marks. The GNC Marks are valuable symbols of Opposer's goodwill and the continued strength of the GNC Marks is important to the continued success of Opposer's business.

11. Upon information and belief, 8724709 Canada Inc. ("Applicant") is a Canadian corporation with a place of business at 68, Stinson Street, Montreal, Quebec, Canada H4N 2E7.

12. Opposer is currently involved in pending oppositions in Canada and Brazil regarding Applicant's mark for GMC MEDICAL.

13. Opposer also filed a First 90 Day Request for Extension of Time to Oppose for Good Cause on March 9, 2015 against Applicant's GMC MEDICAL word mark International Class 5 as shown in Application Serial No. 85/973,338.

14. Applicant filed an intent-to-use Application on December 23, 2013, seeking registration of GMC MEDICAL and Design as a trademark for "sun screen preparations" and "medicated skin care preparations; acne treatment preparations; pharmaceutical preparations for skin care, skin treatment, skin protection and skin health restoration; medicated skin preparations" in International Classes 3 and 5, respectively.

15. Upon information and belief, Applicant has not yet used GMC MEDICAL and Design in commerce.

16. The Application for GMC MEDICAL and Design was published for opposition on September 16, 2014.

17. Applicant's mark creates the same meaning and commercial impression as Opposer's portfolio of marks when Applicant's mark is used on or in connection with goods in International Classes 3 and 5.

18. If Applicant is permitted to register GMC MEDICAL and Design for goods in International Classes 3 and 5, the goodwill associated with Opposer's portfolio of marks and the GNC house brand protected under common law rights will be adversely affected.

19. In view of the above, Applicant's mark is likely to cause confusion, mistake, or deceive purchasers as to source suggesting Applicant is associated with or approved, endorsed, affiliated, authorized, or sponsored by Opposer.

20. Accordingly, Opposer will be damaged if Applicant is permitted to register GMC MEDICAL and Design in International Classes 3 and 5.

WHEREFORE, Opposer respectfully prays that the registration sought by Applicant be refused and that this opposition be sustained.

Respectfully submitted,

Dated: March 16, 2015

By: /John W. McIlvaine/
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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I certify that a true and correct copy of **NOTICE OF OPPOSITION** was served this 16th day of March, 2015, upon the following via electronic mail and first class mail:

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